

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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MICHAEL SAMUELS, as Administrator of  
THE ESTATE OF ORLANDO SAMUELS,

Plaintiff,

-vs-

**NOTICE OF PETITION**

Case No. 09 CV 6223 T

COUNTY OF MONROE, THE MONROE COUNTY  
SHERIFF'S DEPARTMENT, PATRICK O'FLYNN  
as the Monroe County Sheriff, RONALD HARLING,  
DEPUTY NEAL DESANTI, DEPUTY T. ROE,  
DEPUTY A. LEISENRING, CORRECTIONAL  
MEDICAL SERVICES, INC., MICHAEL LATUNJI, M.D.,  
NURSE J. TRIESKY, NURSE A. HOLMAN,  
NURSE AGRICOLTOSO, NURSE L. LABAR  
and NURSE S. VERSTREATE,

Defendants.

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**PLEASE TAKE NOTICE  
OF A PETITION MADE BY:**

Plaintiff

DATE, TIME AND PLACE  
OF HEARING:

To be determined by the Court, Federal Court House  
100 State Street, Rochester, New York.

SUPPORTING PAPERS:

Petition of plaintiff, sworn to on May 26, 2011 and  
Attorney's Affirmation of Mark J. Valerio, dated  
May 26, 2011.

RELIEF REQUESTED:

Order approving compromise and settlement of the  
claim for wrongful death and conscious pain and  
suffering.

GROUND FOR RELIEF:

EPTL 5-4.6

Dated: May 26, 2011  
Rochester, New York

VALERIO & KUFTA, P.C.

By: 

Mark J. Valerio, Esq.

Attorney for Plaintiff

400 Andrews Street, Suite 620  
Rochester, New York 14604  
(585) 442-1040

TO: Debra Young, Esq.  
Thuillez, Ford, Gold, Butler & Young, LLP  
Attorney for Defendants  
20 Corporate Woods Blvd.  
Albany, New York 12211  
(518) 455-9952

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**PETITION**

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NURSE AGRICOLTOSO, NURSE L. LABAR  
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Defendants.

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Michael Samuels, being duly sworn, deposes and states:

1. I live at 84G Clintwood Court, Rochester, New York 14620.
2. I am the brother of the decedent, Orlando Samuels, and submit this Petition seeking approval of the proposed settlement of this action.
3. This is an action for the wrongful death and conscious pain and suffering of Orlando Samuels, who died of a heart attack on May 5, 2007 while an inmate in the Monroe County Jail.
4. On January 28, 2008 I was appointed by the Surrogate Court of Monroe County as the Guardian of the Property of decedent's sole survivor and distributee, his minor daughter Dorisha Samuels (dob ), who was 14 years old at the time of his death. Letters of Administration were issued to me by said Court on April 21, 2008. Copies of the above

documents are attached as **Exhibit A**. The Letters of Administration have not been revoked and are presently in full force and effect. An order discharging me as Guardian of the Property of Dorisha Samuels, who turned 18 on , was issued by the Monroe County Surrogate Court on April 19, 2011, a copy of which is attached as **Exhibit B**.

5. At the time of my appointment as Administrator, a cause of action existed against the above defendants for the wrongful death and conscious pain and suffering of the decedent. The decedent was brought to the Monroe County Jail on a parole violation on April 27, 2007. He was a known cardiac patient and was on four medications to control his heart condition, however, he was not provided with any of his heart medications for the nine days that he was at the jail before he suffered a fatal heart attack.

6. An action was initially commenced in Supreme Court Monroe County, and was removed to this Court by the defendants.

7. The medical malpractice carrier for Correctional Medical Services, Inc. (CMS) is Everest Indemnity Insurance Company with policy limits of \$1,000,000 per medical incident. Upon information and belief, CMS and its insurance carrier took over the defense and indemnification of the Monroe County defendants on August 16, 2010. After several years of litigation and extended settlement negotiations, the defendants have offered to settle all claims for the sum of \$275,000.

8. Petitioner believes that it is in the best interests of the distributee and the estate of the decedent, and those interested therein, to accept the settlement so offered and that this is the largest amount that can be obtained without further litigation.

9. The grounds of petitioner's belief are that there is significant risk in pursuing the litigation further based on both the facts of this case and the law that governs the damages available on each cause of action. In the first instance, liability remains a contested issue and the defendants have retained two medical experts who have given opinions that defendants are not

liable for the decedent's death, given his past history of cocaine and alcohol abuse. With respect to damages, the claim for conscious pain and suffering of the decedent is limited to approximately 25 minutes, from the time he notified the staff of his chest pain to the time he collapsed and became unconscious. He never regained consciousness and was pronounced dead at Rochester General Hospital at approximately 8:15 a.m. The claim for loss of parental guidance is also compromised by the decedent's criminal history, and the likelihood that he would be returning to State prison as a result of his most recent parole violation. There is no claim for loss of financial support since the decedent was unemployed and receiving public assistance.

10. At the time of his death, decedent was 42 years old (dob 6/5/64), divorced and had been unemployed for several years. His only survivor and distributee was his daughter, Dorisha Samuels, who was 14 years old at the time of his death. She is of sound mind and is now 18 years old.

11. On August 26, 2008, Petitioner retained Valerio & Kufta, P.C., Mark J. Valerio, Esq., of counsel, as his attorney. A copy of the retainer agreement is attached as **Exhibit C**. In view of the results achieved, petitioner requests that the Court approve a fee as follows: that the attorney's disbursements in the sum of \$9,583.86 first be deducted from the gross settlement of \$275,000; that of the balance of \$265,416.14 a fee of \$88,472.05 or 33% be allowed, which together amount to total compensation of \$98,055.91.

12. The Petitioner has not become interested in this matter at the instance of the defendants or anyone acting on defendants' behalf, directly or indirectly.

13. Funeral expenses in the amount of \$4,570 were paid by Lamar Samuels, Orlando's brother; Lisa Samuel, Orlando's sister paid \$1,107.08 for the casket. Both Lamar and Lisa are requesting reimbursement of those expenses. A copy of the bills for the funeral and casket are attached as **Exhibit D**. There are no unpaid medical bills or hospital bills outstanding and there are no assignments, compensation claims or liens filed with petitioner as administrator except for the following:

(a) The Monroe County Department of Social Services has submitted a claim of \$62,038.41 for public assistance rendered to decedent for the years 2004-2007. This claim has been reduced to the sum of \$19,428.85 and will be paid from the estate proceeds pending allocation of the settlement between the conscious pain and suffering claim and the wrongful death claim by the Monroe County Surrogate Court.

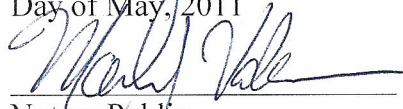
14. No previous application has been made for the relief requested herein.

**WHEREFORE**, it is respectfully requested that this Court grant an order: allowing the petitioner to compromise and settle the claims for conscious pain and suffering and wrongful death of the decedent against the defendants herein upon payment by or on behalf of the defendants in the sum of \$275,000, payable jointly to Valerio & Kufta, P.C. and Michael Samuels, as Administrator of the estate of Orlando Samuels; allowing payment to Valerio & Kufta, P.C. of its expenses and attorney fees upon receipt of said funds and prior to the transfer of this matter to the Surrogate's Court; and transferring this matter to the Monroe County Surrogate's Court for allocation of the net proceeds of the settlement

Dated: May 26, 2011

  
Michael Samuels

Sworn to before me this 26  
Day of May, 2011

  
Notary Public

MARK J. VALERIO  
Notary Public, State of New York  
Qualified in Monroe County  
Commission Expires March 30, 2014

*Exhibit A*

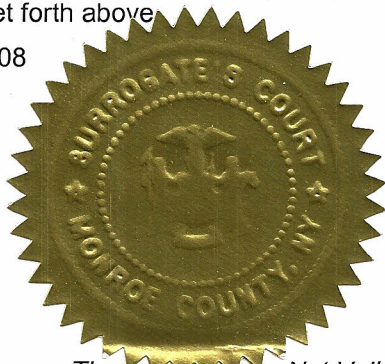
Name of Ward: **Dorisha Ann Samuels** File #: **2007-1647**  
Type of Letters Issued: **LETTERS OF GUARDIANSHIP (PROPERTY ONLY)**  
Residence of Ward: County Of Monroe Date of Birth: 05-23-1992  
Guardian Appointed: **Michael Samuels**  
Mailing Address: 130 Milford Street Apt. B-6  
Rochester NY 14615  
Bank in Which All Monies are to be Deposited: **Upstate National Bank**  
One West Main Street  
Rochester NY 14614

**LIMITATIONS: NONE**

Property of the Ward is subject to joint control with the Chief Clerk of Monroe County Surrogate Court; no withdrawals, transfers or investments are legal without Court Order; the Guardian may not receive any funds or property of the Ward except jointly with the Chief Clerk of Monroe County Surrogate Court.

THESE LETTERS, granted pursuant to a decree entered herein on this date, authorize and empower the guardian(s) above named to perform all acts requisite to the proper administration and disposition of the person, property, or person & property, (as stated above) of the ward in accordance with the decree and the laws of New York State, subject to the limitations, if any, as set forth above.

Dated: January 28, 2008



IN TESTIMONY WHEREOF, the seal of the Monroe County Surrogate's Court has been affixed.

WITNESS, Hon Edmund A Calvaruso, Judge of the Monroe County Surrogate's Court

Hon. Edmund A Calvaruso

*These Letters are Not Valid Without the Raised Seal of the Monroe County Surrogate's Court*

**Guardianship Attorney**

**Mark J Valerio**

**Valerio & Kufra**

400 Andrews Street Suite 100

Rochester NY 14604

File #: 2008-373

Name of Decedent: **Orlando Samuels**

Date of Death: **May 5, 2007**

Domicile of Decedent: **County Of Monroe**

Fiduciary Appointed: **Michael Samuels**  
Mailing Address: 130 Milford Street Apt. B-6  
Rochester NY 14615

Letters Issued: **LETTERS OF ADMINISTRATION**

Limitations: **NONE**

WITH RESPECT TO THE PROSECUTION OR ENFORCEMENT OF A CAUSE OF ACTION ON BEHALF OF THE ESTATE, NO FIDUCIARY NAMED ABOVE MAY ENFORCE ANY JUDGMENT OR RECEIVE ANY FUNDS WITHOUT FURTHER ORDER OF THIS COURT

THESE LETTERS, granted pursuant to a decree entered by the court, authorize and empower the above-named fiduciary or fiduciaries to perform all acts requisite to the proper administration and disposition of the estate/trust of the Decedent in accordance with the decree and the laws of New York State, subject to the limitations and restrictions, if any, as set forth above.

Dated: **April 21, 2008**



IN TESTIMONY WHEREOF, the seal of the Monroe County Surrogate's Court has been affixed.

WITNESS, Hon Edmund A Calvaruso, Judge of the Monroe County Surrogate's Court.

Hon. Edmund A Calvaruso

*These Letters are Not Valid Without the Raised Seal of the Monroe County Surrogate's Court*

**Attorney for the Estate:**

**Mark J Valerio**

**Valerio & Kufra**

400 Andrews Street Suite 100  
Rochester NY 14604

*Exhibit B*

**SURROGATE'S COURT STATE OF NEW YORK  
COUNTY OF MONROE**

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In the Matter of the Guardianship of,

Dorisha Ann Samuels

A Former Minor,

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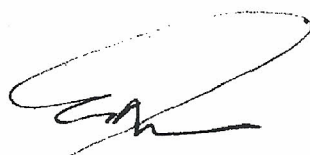
**ORDER DISCHARGING  
GUARDIAN**

File No. 2007-1647/A

The Petitioners having filed a Petition seeking discharge of Michael Samuels as the Guardian of the property for Dorisha A. Samuels dated April 13, 2011, and it appearing that Michael Samuels has fully administered said Guardianship of the property in accord with the provisions and Orders of this Court, and due deliberation having been had thereon, it is

**ORDERED**, that Michael Samuels is hereby released and discharged as the Guardian of the property of Dorisha A. Samuels, and from all further liability and accountability with respect to the Guardianship herein.

Dated: April 19, 2011

  
\_\_\_\_\_  
Hon. Edmund A. Calvaruso  
Surrogate

FILED  
2011 APR 19 PM 2:44  
SURROGATE'S COURT  
COUNTY OF MONROE, NY

*Exhibit C*

***VALERIO & KUFTA, P.C.***

***CONTRACT FOR LEGAL SERVICES***

August 26, 2008

I hereby hire the Law Firm of Valerio & Kufta, P.C. to represent me in a claim for the wrongful death of my brother, Orlando Samuels.

I agree to pay 1/3 of the "net amount" recovered as attorney's fees, the "net amount" being the amount remaining after deducting any expenses paid by Valerio & Kufta, P.C. from the total amount recovered. The legal fee is subject to approval by the Surrogate's Court.

All expenses in the litigation of my personal injury case will be my responsibility. I will give Valerio & Kufta, P.C. a deposit of \$       —       to cover court filing fees, medical record fees, deposition transcripts, expert fees, copy charges, postage, etc. I will receive copies of all invoices paid against my deposit.

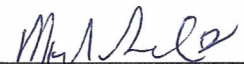
I hereby authorize Valerio & Kufta, P.C.:

- to sign my name to any documents involved in this case ms  
other than the settlement documents and settlement checks
- to hire other lawyers to work on this matter, provided that ms  
such lawyers are paid by Valerio & Kufta, P.C.
- to withhold sufficient sums of money from any recovery ms  
to pay off any liens.

I WILL NOT BE CHARGED ANY FEE UNLESS THERE IS A RECOVERY.

I HAVE READ AND UNDERSTAND THIS CONTRACT.

I HAVE BEEN GIVEN A COPY OF THIS CONTRACT.

  
\_\_\_\_\_  
Michael Samuels, as Administrator of  
the Estate of Orlando Samuels

*Exhibit D*

**Casket Royale**

137 Lafayette Road  
 Hampton Falls, NH 03844  
 800-791-4169 voice  
 603-967-4685 fax

**Invoice**

Date	Invoice #
5/7/2007	6720

Bill To	Ship To
retail050707/samuel Lisa Samuel 9009 Red Clay Lane Charlotte NC 28269 704-599-2822/704-649-3767	D & M Williams Funeral Home 765 Elm Grove Road Rochester NY 14624 585-247-0430 Attn: Orlando Samuels

P.O. Number	Terms	Rep	Ship	Via
phone order	Paid in full	TAN	5/7/2007	BaxGlobal

Qu	Item Code	Description	Price Each	Amount
1	WC-Montague-18-V	18 g-gray velvet interior (wholesale price, brother owns retail casket store in SC-Heaven On Earth	828.00	828.00
1	delivery to	casket for> Orlando Samuels	279.08	279.08

charged to credit card	<b>Total</b>	<b>\$1,107.08</b>
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**D.M. Williams Funeral Home, Inc.**  
765 Elmgrove Road Rochester, New York 14624  
585-247-0430

**Funeral Bill Estimate**

***Funeral Home Charges:***

Transfer to the funeral home	\$200.00	
Embalming	600.00	
Dressing/Casketing	200.00	
Professional service charge/Arrangements	1,250.00	
Supervision for visitation	150.00	
Supervision for the funeral service	200.00	
Facilities for visitation	250.00	
Hearse	150.00	
Limousine	250.00	
Burial Vault, graveliner	750.00	
Register book set	75.00	
Newspaper notice (\$9 per line)	To Be Added	
Temporary grave marker	25.00	
<b>Total Funeral Home Charges:</b>		<b>\$4,100.00</b>

***Cash Advances:***

Riverside Cemetery	\$1,110.00	
-Riverside Saturday charge	\$300.00	
Death certificates (\$30 each)	30.00	
Motorcycle escort	145.00	
Burial Equipment (device, chairs, tent, grass)	135.00	
<b>Total Cash Advances</b>		<b><u>\$1,720.00</u></b>

<b>Total Funeral Charges</b>	<b>\$5,820.00</b>	
Social Service Stipend	<u>-\$1,250.00</u>	
		<b>\$4,570.00</b>